Checklist Item (xii)--Local Dialing Parity

I. The Legal Standard

A. The 1996 Act

Checklist item (xii) requires a BOC to provide access or interconnection which includes "nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity[1] in accordance with the requirements of Section 251(b)(3)."[2] Section 251(b)(3) requires that all local exchange carriers provide competing providers of telephone exchange service and telephone toll service with "dialing parity" and further that all such local exchange carriers permit competing providers "to have non-discriminatory access to telephone numbers, operator services, directory assistance and directory listing, with no unreasonable dialing delays."[3]

B. FCC Orders

The Commission precludes the use of access codes to route calls among competing providers of telephone exchange service[4] and requires LECs to permit telephone exchange

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[1] "Dialing parity" means that "a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services (including such local exchange carrier)." 47 U.S.C. §153(15).

[2] 47 U.S.C. §271(c)(2)(B)(xii).

[3] 47 U.S.C. §251(b)(3).

[4] In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket Nos. 96-98, 95-185, NSD File No. 96-8, (August 8, 1996) (Second Report and Order) ¶¶30, 33.

service customers within a defined local calling area to dial the same number of digits to make a local call, notwithstanding the identity of the customer or called party's local telephone service provider.[1]

C. State Application of the Legal Standard

Even before the passage of the 1996 Act, intraLATA presubscription had been required in New York. In June of 1995, the NYPSC directed Bell Atlantic-NY to implement presubscription in its digital central offices by March 1, 1996,[2] and on September 27, 1995 the NYPSC directed all LECs to file intraLATA presubscription plans by December 26, 1995.[3]

II. The Record

A. Bell Atlantic-NY's Position

According to Bell Atlantic-NY, it provides full compliance with this Checklist item. Bell Atlantic-NY states that all calls are processed in accordance with the requirements for local switching set forth by Telecordia Technologies.[4]

B. Competitors' Positions

There are no allegations that Bell Atlantic-NY fails to satisfy this Checklist item.

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1 Id., ¶¶35, 68.

2 Case 92-C-0665, Order Approving Performance Regulation Plan Subject to Modification (issued June 16, 1995).

3 Case 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995), BA-NY Application, Appdx. I, Vol. 2, Tab 14.

4 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Vol. 1, ¶¶258-260.

III. Findings

A. Legal Obligation to Provide Checklist Item

Bell Atlantic-NY is legally obligated to provide dialing parity under its interconnection agreements and tariffs.[1]

B. Verification of Checklist Compliance

Bell Atlantic-NY demonstrates that it provides nondiscriminatory access to services that are necessary to allow a requesting carrier to implement local dialing parity in accordance with the requirements of §251(b)(3). Bell Atlantic-NY shows that customers of competing carriers are able to dial the same number of digits that Bell Atlantic-NY's customers dial to complete a local telephone call and that these customers do not receive service inferior in quality to that of customers of Bell Atlantic-NY.[2]

* * *

For the foregoing reasons, we verify compliance with Checklist item (xii).

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1 Id., ¶258 and Attachment B; BA-NY Application p. 8 and Attachment A, Exh. 1.

2 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Vol. 1, ¶259.

Checklist Item (xiii): Reciprocal Compensation

I. The Legal Standard

A. The 1996 Act

Checklist item (xiii) requires reciprocal compensation arrangements that meet the 1996 Act's pricing standards.[1] Those standards, set forth in §252, specify that terms and conditions for reciprocal compensation may be considered just and reasonable only if they "(i) . . . provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier"; and (ii) . . . determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[2] These requirements, however, do not preclude "the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."[3]

B. The FCC Orders

The FCC has determined that bill-and-keep may be imposed by a state commission only "if traffic is roughly balanced in the two directions and neither carrier has rebutted the presumption of symmetrical rates."[4]

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1 47 U.S.C. §271(c)(2)(B)(xiii).

2 47 U.S.C. §252(d)(2)(A).

3 47 U.S.C. §252(d)(2)(B)(i).

4 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al., CC Docket No. 96-98, et al., First Report and Order (rel. August 8, 1996)(Local Competition Order), ¶1112.

The FCC has determined as well that reciprocal compensation rates must be set on the basis of forward-looking economic costs, estimated in accordance with TELRIC, and that, in general, they are to be set symmetrically, on the basis of the ILEC's costs.[1] The FCC further noted that the "additional costs" referred to in the statute as recoverable are primarily the traffic-sensitive component of tandem or end-office local switching, together, in accordance with TELRIC analysis, with a reasonable allocation of common costs.[2] "Where the [CLEC's] switch serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the [CLEC] is the [incumbent's] tandem interconnection rate,"[3] which will be higher than its end-office interconnection rate.

The FCC determined as well that reciprocal compensation arrangements apply only to local traffic.[4] In February 1999, the FCC determined that traffic directed to an Internet Service Provider (ISP) and bound for the Internet was, in fact, largely interstate and therefore not subject to its reciprocal compensation rule. It instituted a proposed rulemaking on the subject but determined, at least for the time being, that carriers remained bound by their existing interconnection agreements, as interpreted by state commissions, and that states remained free to apply reciprocal compensation to ISP traffic.[5]

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1 47 C.F.R. §§51.705, 51.711.

2 Local Competition Order, ¶¶1057-1058, 1090.

3 47 C.F.R. §51.711(a)(3).

4 Local Competition Order, ¶¶1034-1035; 47 C.F.R. §51.701.

5 Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 et al., Declaratory Ruling and Notice of Proposed Rulemaking (rel. February 26, 1999).

C. State Application of the Legal Standard

Even before enactment of the 1996 Act, the NYPSC had adopted a framework for reciprocal compensation that was cost-based (reflecting the incremental cost of terminating local calls at end-office and tandem switches), mutual, and symmetrical.[1] Consistent with those determinations, Bell Atlantic-NY's tariffs provide for reciprocal compensation at the higher tandem or lower end-office rate (termed, respectively, "Meet Point B" and "Meet Point A"), depending on the nature and location of the interconnection. The Meet Point A (end-office) rate is equal to the sum of the rates for switch usage and a common trunk port. The Meet Point B (tandem) rate is equal to the sum of the rates for a tandem trunk port, end-office-to-tandem common trunking and associated trunk port costs, tandem switch usage, and end-office switch usage.

In 1997, in compliance with the NYPSC's opinion and order in Phase 1 of the First Network Elements Proceeding,[2] the reciprocal compensation rates for both types of interconnection were modified to reflect the NYPSC's determinations of TELRIC-based switching costs. They are subject to further modification in light of the refinements in TELRIC determinations that may be made in the Second Network Elements Proceeding. Most (but not all) interconnection agreements between Bell Atlantic-New York and CLECs

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1 Case 92-C-0665, New York Telephone Company-Performance Regulatory Plan, Order Approving Performance Regulatory Plan Subject to Modification (issued June 16, 1995); Case 94-C-0095, Local Exchange Competition Proceeding, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Competition (issued September 27, 1995), BA-NY Application, Appdx. I, Vol. 2, Tab 14.

2 Cases 95-C-0657 et al., First Network Elements Proceeding, Opinion No. 97-2 (issued April 1, 1997) (BA-NY Application, Appdx. G, Vol. 1, Tab 9).

defer to the tariffed rates, some of them providing for a "blended" rate lying between those parameters and, in some cases, subject to change as the CLEC's network evolves.

The NYPSC recently reexamined reciprocal compensation rates in light of the growth of "convergent" traffic (i.e., very large volumes of traffic inbound to individual customers who produce far smaller volumes of outbound traffic) and the associated imbalances in reciprocal compensation payments.[1] It determined that a carrier with an inbound-to-outbound traffic ratio of 3:1 or greater would be rebuttably presumed to be serving predominantly convergent traffic and, accordingly, to have a network that lacked tandem equivalence. To maintain the cost basis for reciprocal compensation, payments to any such carrier with respect to traffic exceeding the 3:1 ratio would be reduced to the end-office rate unless the carrier could show, in a manner consistent with guidelines the NYPSC described, that its network and service were such as to warrant tandem-rate compensation for all traffic.[2] Compliance filings pursuant to that decision are under review.

For further discussion of pricing matters, see below, concerning pricing.

II. The Record

A. Bell Atlantic-NY's Position

In its application, Bell Atlantic-NY reports that during the first seven months of 1999, it exchanged an average of 2.5 billion minutes of traffic each month with 27 local wireline carriers, made reciprocal compensation payments to other carriers of $98.4 million, and

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1 Convergent traffic includes Internet traffic; much of the remainder, however, is intrastate.

2 Case 99-C-0529, Reexamination of Reciprocal Compensation, Opinion No. 99-10 (issued August 26, 1999), BA-NY Application, Appdx. I, Vol. 2, Tab 18.

received reciprocal compensation payments of only $7.5 million. It adds that it is paying reciprocal compensation with respect to Internet traffic consistent with the NYPSC's recent order.[1]

B. Competitors' Positions

Parties did not address this issue in their final briefs. Earlier comments had raised concerns that Bell Atlantic-NY was improperly attempting to avoid paying reciprocal compensation with respect to Internet traffic.[2]

III. Findings

A. Legal Obligation to Provide Checklist Item

Bell Atlantic-NY is providing reciprocal compensation under the legally binding obligations in its NYPSC-approved tariffs and interconnection agreements.[3] These reciprocal compensation arrangements are fully consistent with the Commission's requirements and incorporate TELRIC-based rates.

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1 BA-NY Application, p. 34.

2 E.g., Supplemental Reply Comments of Intermedia Communications, Inc. (October 27, 1998), BA-NY Application, Appdx. C, Vol. 37, Tab 546, pp. 10-11.

3 BA-NY Application, p. 8.

B. Verification of Checklist Compliance

Bell Atlantic-NY is making payments to CLECs pursuant to its reciprocal compensation obligations, as set forth in its tariffs and interconnection agreements.[1]

* * *

For the foregoing reasons, we verify compliance with the requirements of Checklist item (xiii).

1 Several CLECs have challenged Bell Atlantic-NY's interpretation of those obligations, particularly with respect to the applicability of the "convergent traffic" decision described above. These disputes will be resolved in accordance with NYPSC procedures, and their existence does not suggest a failure to satisfy the Checklist item.

Checklist Item (xiv)--Resale

I. Legal Standard

A. The 1996 Act

Checklist item (xiv) requires a BOC to make "telecommunications services ... available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."[1] Section 251(c)(4)(A) requires a BOC "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 252(d)(3), in turn, requires that wholesale rates be determined "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributed to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." Finally, §251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on resale.

B. FCC Orders

The Commission requires that services be made available for resale on "terms and conditions that are reasonable and non-discriminatory."[2] In addition, the services must be made available for resale at parity; that is, the services provided to the requesting carrier must be "equal in quality, subject to the same conditions, and provided within the same

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1 47 U.S.C. §271(c)(2)(B)(xiv).

2 47 C.F.R. §51.603(a).

provisioning time intervals that the LEC provides these services to others, including end users."[1]

With respect to price, "the wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the incumbent LEC's existing retail rate for the telecommunications service, less avoided retail costs," as described.[2]

Finally, the FCC has included digital subscriber line (DSL) technology as one of several "advanced services" under the 1996 Act.[3] The FCC concluded that advanced services are "telecommunications services"[4] and noted that ILECs have the obligation to offer for resale, pursuant to §251(c)(4), all advanced services that they generally provide "at retail to subscribers who are not telecommunications carriers."[5]

C. State Application of Legal Standards

The New York Commission has barred prohibitions on resale in a series of orders going back to late 1995.[6] Rates for services sold for resale were set by the NYPSC on a

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1 47 C.F.R. §51.603(b).

2 47 C.F.R. §§51.607,51.609.

3 Deployment of Wireline Services Offering Advanced Telecommunications Capability etc., CC Docket No. 98-147, et al., (rel. August 7, 1998), ¶3.

4 Id., ¶35

5 Id., ¶60.

6 Cases 95-C-0657, et al., First Network Elements Proceeding, Order Considering Loop Resale and Links and Ports Pricing (issued November 1, 1995), BA-NY Application, Appdx. G, Vol. 1, Tab 1; id., Order Considering Loop Resale and Links and Ports Pricing (issued February 1, 1996), BA-NY Application, Appdx. G, vol. 1, Tab 2; id. Order

permanent basis in November 1996.[1] On the basis of the record before it, the NYPSC determined that Bell Atlantic-NY's wholesale discount should be 21.7% where the reseller provided its own operator services and 19.1% where Bell Atlantic-NY provided operator services. These rates are consistent with the FCC's rules and neither Bell Atlantic-NY nor any CLEC has challenged them.

In addition to paying the discounted wholesale price for the services they purchase for resale, resellers are also subject to various non-recurring charges. Those charges were considered and set, in a manner consistent with the FCC's pricing regulations, in Phase 2 and Phase 3 of the New York Commission's First Network Elements Proceeding.[2] They are subject to further examination in the pending Second Network Elements Proceeding.[3]

Declaring Resale Prohibitions Void and Establishing Pricing Terms (issued June 25, 1996), BA-NY Application, Appdx. G, vol. 1, Tab 4.

1 Cases 95-C-0657 et al., supra, Opinion No. 96-30 (issued November 27, 1996), BA-NY Application, Appdx. G, Vol. 1, Tab 7 (the Resale Opinion), rehearing denied by Order Denying Petition for Rehearing (issued February 18, 1997), BA-NY Application, Appdx. G, Vol. 1, Tab 8. Temporary resale rates had been previously set in Opinion No. 96-18 (issued July 18, 1996), BA-NY Application, Appdx. G, Vol. 1, Tab 5.

2 Cases 95-C-0657 et al., supra, Opinion NO. 97-2 (issued April 1, 1997)(the Phase 1 Opinion), BA-NY Application, Appdx. G, Vol. 1, Tab 9, rehearing denied in most respects in Opinion No. 97-14 (issued September 22, 1997)(the Phase 1 Rehearing Opinion), BA-NY Application, Appdx. G, Vol. 2, Tab 12; Opinion No. 97-19 (issued December 22, 1997)(the Phase 2 Opinion), BA-NY Application, Appdx. G, Vol.2, Tab 13, rehearing granted in part in Opinion No. 98-13 (issued June 8, 1998)(the Phase 2 Rehearing Opinion), BA-NY Application, Appdx. G, Vol. 2, Tab 15.

3 Case 98-C-1357, Second Network Elements Proceeding.

II. The Final NYPSC Record

A. Bell Atlantic-NY's Position

In its application, Bell Atlantic-NY reports that, through July 1999, it had provided 314,000 resold lines (more than 250,000 business and more than 63,000 residential) to more than 65 competing carriers.[1] It says it has delivered resale services on time and that its performance results are comparable to those for its own retail orders; and it asserts KPMG has verified its ability to provide resold lines in volumes far exceeding today's.

Reported intervals for completing CLEC orders may be longer than those for completing Bell Atlantic-NY retail orders, it explains, because CLECs often request delivery on dates later than those that are available to them; when CLECs request the normal provisioning interval, it asserts, they receive it.[2] Bell Atlantic-NY adds that resellers may resell any of its customer-specific arrangements (CSAs) to any customer meeting the terms of that CSA and may aggregate traffic from multiple customers to meet volume requirements.

The Final KPMG report shows satisfactory results with respect to resale account management functions (which, as described below, TRA had called into question). Only two items ("Training is provided for use of documentation" and "Document instructs users how to notify BA-NY about document errors or omissions") are shown as "satisfied with qualifications."[3]

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1 BA-NY Application, p. 35.

2 Id., pp. 35-36.

3 KPMG Final Report, BA-NY Application, Appdx. C, Vol. 60a-c, Tab 916, Section VII (C)(3.0) and (D)(3.0).

B. Commenters' Positions

In its final brief, TRA renews earlier claims that Bell Atlantic-NY fails to provide services and facilities to resellers at parity with what it provides to its own customers; it asserts the Commission has required a showing of actual parity as part of BOC's proof under §271.

TRA's areas of concern, in addition to OSS matters treated under Checklist item (ii), center on account management. TRA maintains account managers continue to be unresponsive or worse, often denying CLECs access to the resources they need, and that they often lack needed knowledge, experience, or interest. Resellers, it alleges, are unable to rely on an established escalation list of responsible individuals. It asserts that "Notwithstanding what KPMG may have experienced with its dedicated account manager, the real world experiences of CLECs with their managers demonstrate a repeated pattern of limited support, indifference, and ineffectiveness."[1]

MCI WorldCom, citing metrics from the first half on 1999, sees evidence of an inability on Bell Atlantic-NY's part to respond to increased order volumes from CLECs.[2]

III. Findings

We find that Bell Atlantic-NY demonstrates that it makes telecommunications services available for resale in accordance with §§251(c)(4) and 252(d)(3) of the 1996 Act. Bell Atlantic-NY has shown that it (1) offers for resale at wholesale rates any telecommunication

1 TRA Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 62, Tab 960, p. 9 (emphasis in original).

2 MCI Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 62, Tab 946, p. 14.

service that it provides at retail to subscribers who are not telecommunications carriers and (2) offers such telecommunications services for resale without unreasonable or discriminatory conditions or limitations, as the discussion of Checklist item (ii) above establishes. Bell Atlantic-NY, in addition, shows it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.

1. Availability of Services

Bell Atlantic-NY has a concrete legal obligation to make available telecommunications services at wholesale rates,and it has demonstrated that it is fulfilling that obligation.[1] The legal obligation is set forth in various orders of the NYPSC, that preclude restrictions on resale and determine the amount of the wholesale discount; in Bell Atlantic-NY's Tariff No. 915, which took effect on October 8, 1996; and in various interconnection agreements approved by the NYPSC.

2. Parity and Other Quality Concerns

Several parties raise concerns, described above, about whether Bell Atlantic-NY is in fact providing resale at parity. None of these parties, however, is itself a significant reseller,[2] and they describe their concerns anecdotally, providing little if any evidentiary support for the view that the failings they allege are endemic. We are unaware of any reseller alleging specific matters that affect the market, either in the 271 proceeding or through specific complaints to the Commission.

[1] BA-NY Application, p. 8.

[2] MCI maintains a small number of resale accounts but is not currently engaged in any material resale activity.

Moreover, Bell Atlantic-NY's performance in the delivery of resale services viewed through the Performance Assurance Plan metrics over the past three months has been satisfactory overall. Critical metrics are being met; no failures appeared in June, July, or August.[1] Finally, as Bell Atlantic-NY points out, the number of resold lines continues to grow.

PRICING

I. Introduction and Summary

Bell Atlantic-NY's pricing obligations with respect to resale, unbundled network elements, and interconnection have been the subject of extensive inquiry and action in New York. Rates for resale, network elements, and interconnection (reciprocal compensation) have been set that satisfy the 1996 Act and the FCC's avoided cost and TELRIC rules thereunder.[2] The rates are set forth in three New York Telephone Company tariffs whose applicability is limited to other carriers, as distinct from retail customers: No. 914 (interconnection, including collocation and reciprocal compensation), No. 915 (Wholesale Service [i.e., Resale]) and No. 916 (Unbundled Network Elements).[3]

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[1] Performance Assurance Plan--Mode of Entry and Critical Measures for Resale, data for June, July, and August 1999.

[2] 47 U.S.C. §252(d); 47 C.F.R. §§51.503, 51.505, 51.507, 51.509, 51.511, 51.607, 51.609, 51.703, 51.705, 51.709, and 51.711. See, generally, the decisions of the New York Commission set forth in BA-NY Application, Appdx. G. More specific references to those decisions are made later in this section.

[3] These tariffs are set forth in BA-NY Application, Appdx. H.

In sum, the tariffed resale discount for Bell Atlantic-NY is 19.1% where Bell Atlantic-NY provides operator services and 21.7% where the reseller provides operator services.

Interconnection agreements between Bell Atlantic-NY and other carriers either adopt those tariffed rates or incorporate different rates agreed to by the parties in negotiation.

II. Resale

Rates for services sold for resale were set by the New York Commission on a permanent basis in November 1996.[1] The New York Commission considered avoided cost studies that had been submitted by Bell Atlantic-NY and AT&T, among others. It adopted the standard that "costs should be treated as avoidable if a prudent, efficient LEC would avoid them if it left the retail business" and that adopting that premise for purposes of calculating the discount offers the best assurance that the purpose of the exercise will be achieved and that resellers will not be required to pay a wholesale price that recovers some of the costs of the LEC's remaining retail activities.[2]

The New York Commission analyzed the specific accounts identified by the FCC. In doing so, it relied on data submitted by Bell Atlantic-NY and derived from its Financial Assurance Information System; because those data were more granular than the data incorporated in the AT&T study, which had been taken from Bell Atlantic-NY's Automated Reporting Management Information System, they lent themselves to more refined analysis.

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1 Cases 95-C-0657 et al., First Network Elements Proceeding, Opinion No. 96-30 (issued November 27, 1996)(the Resale Opinion), BA-NY Application, Appdx. G, Vol. 1, Tab 7, rehearing denied by Order Denying Petition for Rehearing (issued February 18, 1997), BA-NY Application, Appdx. G, Vol 1, Tab 8.

2 Resale Opinion, p. 35. The NYPSC there noted that this was the FCC's view as well.

For each of the accounts regarded by the FCC as comprising direct costs presumptively avoided, the NYPSC considered the evidence and determined an avoided percentage; in some instances, it analyzed the account on a sub-account by sub-account basis. With regard to the indirect avoided costs, the NYPSC applied the FCC's premise of pro rata reduction. To calculate the indirect cost avoidance percentage, it used a refinement of AT&T's proposal to divide total avoidable direct costs by total direct costs.

In addition to paying the discounted wholesale price for the services they purchase for resale, resellers are also subject to various non-recurring charges (NRCs). Those charges were among the ones considered in Phase 2 and Phase 3 of the NYPSC's Network Elements Proceeding, discussed below.

III. Unbundled Network Elements

A. Overview and Method

The NYPSC has issued three principal decisions related to the pricing of unbundled network elements (referred to as the Phase 1 Opinion, the Phase 2 Opinion, and the Phase 3 Opinion)[1]; the opinions are described in some detail below. Pursuant to those opinions and

[1] Cases 95-C-0657 et al., supra, Opinion No. 97-2 (issued April 1, 1997)(the Phase 1 Opinion), BA-NY Application, Appdx. G, Vol. 1, Tab 9, rehearing denied in most respects in Opinion No. 97-14 (issued September 22, 1997)(the Phase 1 Rehearing Opinion), BA-NY Application, Appdx. G, Vol. 2, Tab 12; Opinion No, 97-19 (issued December 22, 1997)(the Phase 2 Opinion), BA-NY Application, Appdx. G, Vol. 2, Tab 13, rehearing granted in part in Opinion No. 98-13 (issued June 8, 1998)(the Phase 2 Rehearing Opinion), BA-NY Application, Appdx. G, Vol. 2, Tab 15; Opinion No. 99-4 (issued February 22, 1999)(the Phase 3 Opinion), BA-NY Application, Appdx. G, Vol. 2, Tab 19, rehearing granted in part in Opinion No. 99-9 (issued July 26, 1999)(the Phase 3 Rehearing Opinion), BA-NY Application, Appdx. G, Vol. 2, Tab 24. Administrative Law Judge Joel A. Linsider presided over the concluded phases of this proceeding and continues to preside over ongoing phases.

various other orders, permanent or temporary rates are now in place for network elements requested by competitors.[1] In addition, the NYPSC has under way the Second Network Elements Proceeding, in which it is considering many network elements anew, on the basis of more current information.[2]

In setting prices, the NYPSC has applied a forward-looking (TELRIC) method consistent with that prescribed in the FCC's pricing rules.[3] It adopted the FCC's so-called "scorched node" approach, which assumes, in estimating costs, "that wire centers will be placed at the incumbent LEC's current wire center locations, but that the reconstructed local network will employ the most efficient technology for reasonably foreseeable capacity requirements."[4] It recognized as well that such costs as depreciation and return on capital should be estimated in a manner that takes account of likely future developments.

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1 A collaborative process convened for the purpose identified almost 400 elements and sub-elements to be costed and priced.

2 Case 98-C-1357, Second Network Elements Proceeding, Order Denying Motion to Reopen Phase 1 and Instituting New Proceeding (issued September 30, 1998), BA-NY Application, Appdx. G, Vol. 2, Tab 18. The Second Network Elements Proceeding comprises three modules. The first, limited to directory data base issues, recently went to hearing. The second and third modules, relating, respectively, to collocation and to network elements generally, are to go to hearing in November 1999 and February 2000. An expedited hearing on digital subscriber line (DSL) pricing also will be held in November 1999.

3 Phase 1 Opinion, p. 15; Phase 1 Rehearing Opinion, pp. 4-5.

4 Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. August 8, 1996), ¶685, quoted at Phase 1 Rehearing Opinion, p. 5.

B. Phase 1 Rates

In the Phase 1 Opinion, the NYPSC set rates for local loops, local switching, tandem switching, interoffice transport, signalling links, signal transfer points, and signal control points. In that proceeding, Bell Atlantic-NY had submitted its own cost study and AT&T and MCI supported use of the "Hatfield Model." The NYPSC found that both studies, corrected for their various flaws, generally comported with the TELRIC method and that needed adjustments to the inputs used in the two studies produced results that tended to converge. It set rates within the narrowed range thereby suggested.

The Phase 1 Opinion deaveraged rates for unbundled loops[1] into two zones (major cities and the remainder of the State), finding the record as it stood could not reliably support more extensive deaveraging, particularly in view of conflicting data on the effects of creating a separate Manhattan zone; but it anticipated further deaveraging in the future. That effort is underway in the Second Network Elements Proceeding; pending its completion, Bell Atlantic-NY filed a three-zone deaveraged rate, based on the Phase 1 Opinion cost determinations, that reduced rates in the Manhattan zone. Those rates will remain in effect until final deaveraged loop rates are set, on the basis of new cost information, in the Second Network Elements Proceeding case-in-chief.[2]

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1 The NYPSC found no geographic cost differences that would warrant deaveraging rates for elements other than loops. (Phase 1 Opinion, p. 130, fn. 1.)

2 Case 98-C-1357, supra, Order Allowing Deaveraging Tariff Filing to Take Effect (issued May 28, 1999), BA-NY Application Appdx. G, Vol. 2, Tab. 22.

Bell Atlantic-NY's tariff filing in compliance with the Phase 1 Opinion became permanent (except with respect to switching rates) in June 1998.[1] Switching rates remain temporary pending further consideration (in the Second Network Elements Proceeding) of the implications for the Phase 1 switching rates of certain new evidence adduced in Phase 3.[2]

C. Phase 2 Rates

In the Phase 2 Opinion, the NYPSC examined, again on a TELRIC basis, Bell Atlantic-NY's proposed rates for Operations Support Systems (OSS), Service Management Systems, Operator Services and Directory Assistance, House and Riser Cable Service, and Network Interface Device (NID)-to-NID interconnection. In addition, it considered claimed cost onsets related to resale and a series of proposed non-recurring charges (NRCs) and miscellaneous charges.

Rates in compliance with the Phase 2 Opinion took effect on a permanent basis on July 22, 1998.[3]

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[1] Cases 95-C-0657 et al., supra, Order Approving Tariff and Directing Revisions (issued June 12, 1998), BA-NY Application, Appdx. G, Vol. 2, Tab 16; Order Concerning Petition for Reconsideration of Phase 1 Compliance filing (issued November 6, 1998).

[2] MCI has challenged aspects of the NYPSC's Phase 1 decision, particularly its deaveraging to only two zones; its use of fiber feeder in costing all loops; and its alleged failure to use forward-looking costs in setting rates for switching and connection of central office wiring. MCI Telecommunications Corporation et al. v. New York Telephone Company d/b/a Bell Atlantic-New York, N.D.N.Y. 97-CV-1600. The parties moved for summary judgment in 1998. The New York Commission has a stay request pending because of subsequent events that may moot many issues in the litigation.

[3] Cases 95-C-0657 et al., supra, Order Approving Tariff and Directing Revisions (issued July 22, 1998), BA-NY Application, Appdx. G, Vol. 2, Tab 17. The MCI lawsuit previously noted challenges part of the NYPSC's determination with regard to NRCs; no other aspects of the Phase 2 Opinion have been challenged.

D. Phase 3 Rates

In Phase 3, the NYPSC examined (1) rates for all network elements (and services offered for resale) that had not already been addressed in the earlier opinions and (2) the costs and prices for collocation. Its decision was issued on February 22, 1999; an opinion on rehearing petitions was issued on July 26, 1999.

1. Non-collocation Prices

In a series of decisions that built on and further applied the TELRIC method used in earlier phases, the NYPSC disallowed all switching costs claimed by Bell Atlantic-NY in Phase 3, on the grounds that Bell Atlantic-NY had shown neither that those costs were incremental to the costs allowed, pursuant to the NYPSC's TELRIC method, in Phase 1 nor that good reason existed for not having claimed these costs in Phase 1. It also disallowed some development costs, at least temporarily, on the same premise used to disallow OSS development costs in Phase 2, and it disallowed certain NRCs that were based on studies flawed in the same manner as the Phase 2 studies, though allowing others that were based on better-validated studies. It rejected Bell Atlantic-NY's proposal to price Non-Published Number Service, Additional Listing Service, and Number Pre-Assignment Service on a retail-rate-discounted basis rather than on the basis of costs, and it directed further inquiry into the rate design for multiplexing service.

2. Collocation Prices

Applying a forward-looking TELRIC analysis, the NYPSC determined that the starting point for setting physical and virtual collocation rates should be the model submitted by AT&T and MCI. In rejecting Bell Atlantic-NY's claim that the model was insufficiently tied to the real world and failed to ensure recovery of actual costs, the NYPSC said that Bell Atlantic-NY had

> fail[ed] to distinguish between technologies and methods that are not generally available and those that are available as best practices but, for historical or other reasons, are not in fact deployed. . . . To rely on the latter . . . is . . . to fulfill TELRIC's best-practices mandate and would be proper in principle even if it meant that some actual costs were not recovered. Those actual costs reflect the historical configuration of the ILEC's system, pre-dating any expectation that central offices would be designed for multiple occupancy, and one should not presume that the actual added costs of retrofitting central offices for multiple occupancy should necessarily be borne entirely by the CLECs.[1]

The NYPSC adjusted the AT&T/MCI model, however, to reflect some of Bell Atlantic-NY's proposed inputs, such as those for power costs. On rehearing, it made minor modifications in those inputs.

Bell Atlantic-NY's Phase 3 compliance filing has been submitted and is under review. Pending review and approval of Bell Atlantic-NY's Phase 3 compliance filing, rates for both physical and virtual collocation are in place on a temporary basis.[2] In addition, Bell Atlantic-NY has filed tariffs incorporating rates for the collocation services required to be made

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1 Phase 3 Opinion, p. 54.

2 Case 97-C-2110, Tariff Filing re Virtual Collocation et al., Order Approving Tariff Filing on a Temporary Basis (issued September 23, 1998). The NYPSC noted in its order that BA-NY had represented that the costs at issue had been estimated in a manner consistent with TELRIC, with the applicable NYPSC costing manuals, and with the Phase 1 Opinion. (Id., p. 5.)

available pursuant to the FCC's order of March 31, 1999.[1] The rate aspects of those tariffs were approved by the New York Commission on August 31, 1999.[2]

E. Reciprocal Compensation

Under established NYPSC procedures, one interconnecting carrier compensates the other for calls completed on the other's network in accordance with a cost-based reciprocal compensation arrangement; the costs used to set the compensation rate are the ILEC's.[3] (The procedures predate but are fully consistent with the 1996 Act and the FCC's rules thereunder.) Bell Atlantic-NY's tariff provides for reciprocal compensation at a tandem (Meet Point B") or end-office ("Meet Point A") rate, depending on the nature and location of the interconnection. The Meet Point A rate is equal to the sum of the element rates (set on a TELRIC basis in the First Network Elements Proceeding) for switch usage and a common trunk port. The higher, Meet Point B rate is equal to the sum of the element rates (again set on a TELRIC basis) for a tandem trunk port, end-office-to-tandem common trunking and associated trunk port costs, tandem switch usage, and end-office switch usage. Variations from these tariffed reciprocal compensation rates are provided for in some interconnection agreements.

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1 In the Matter of deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order, FCC 99-48 (March 31, 1999).

2 Cases 99-C-0715 et al., New York Telephone Company - Collocation Offerings, Order Directing Tariff Revisions (issued August 31, 1999), BA-NY Application, Appdx I, Vol. 3, Tab 19.

3 Case 94-C-0095, Local Exchange Competition Proceeding, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995), BA-NY Application, Appdx. I, Vol. 2, Tab. 14.

The NYPSC recently re-examined reciprocal compensation in light of the rapid growth of the Internet and other services that generate very large volumes of traffic inbound to individual customers who produce far smaller volumes of outbound traffic.[1] The NYPSC determined that a carrier whose inbound-to-outbound traffic ratio exceeded 3:1 could be rebuttably presumed to have a network that was not functionally equivalent to a tandem network and that the carrier, whose costs were correspondingly lower than those associated with tandem functionality, should receive reciprocal compensation (for the traffic in excess of the ratio) limited to end-office, rather than tandem, rates. A carrier would be permitted to rebut the presumption by showing that it was functionality equivalent to a tandem-based network even though its traffic ratio exceeded 3:1; and the NYPSC set forth guidelines for making that showing. In addition, the NYPSC found conceptual merit to a Bell Atlantic-NY proposal to remove from the switching costs used to determine reciprocal compensation the costs of "vertical" features not used in the simple routing and delivery of traffic, but referred the estimation of those costs to the Second Network Elements Proceeding.[2]

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1 Case 99-C-0529, Reexamination of Reciprocal Compensation, Opinion No. 99-10 (issued August 26, 1999), BA-NY Application, Appdx. I, Vol. 2, Tab 18. The FCC's decision regarding compensation for termination of traffic to Internet service providers permits the states to continue setting these rates even though it held the traffic at issue to be largely interstate. Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-98 et al., Declaratory Ruling and Notice of Proposed Rulemaking (rel. February 26, 1999), ¶¶21-27.

2 If BA-NY can provide, in its compliance filing, a reasonably supported placeholder estimate of these costs, the proposal may be put into effect before the conclusion of the Second Network Elements Proceeding. It has attempted to do so, and its effort will be reviewed by the New York Commission in the near future.

IV. Conclusion as to Pricing

On the basis of the filings and proceedings summarized above, we can advise the FCC that prices conforming to the FCC's requirements are in effect for resale, interconnection, and unbundled network elements provided by Bell Atlantic-NY. Those prices will be subject to update in the NYPSC's Second Network Elements Proceeding, to ensure their continued compliance with the FCC's requirements.

CONCLUSION

For the reasons set forth above, Bell Atlantic-NY complies with the requirements of the 1996 Telecommunications Act Section 271(c).

Respectfully submitted

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DATED: October 19, 1999

APPENDIX

PERFORMANCE ASSURANCE PLAN[1]

Overview

The intent of the Performance Assurance Plan (PAP, or Plan) is to ensure that the local exchange market will remain open to competition following Bell Atlantic-NY's long distance authorization. It does so by providing assurance that Bell Atlantic-NY have every incentive to achieve the NYPSC's service standards.

In creating the Plan, the New York Commission built upon its prior experience in establishing performance-based plans backed by financial incentives. In 1994, for example, the New York Commission established two service quality improvement plans for New York Telephone, which respectively placed $90 million and $31 million at stake. New York Telephone incurred $50 million in penalties under the first, and refunded an additional $12.6 million under the second. The NYPSC then established the Performance Regulatory Plan (PRP) for New York Telephone, which took effect in 1995. The PRP contains a series of monthly and annual targets, which trigger penalties when they are not achieved. In the first year of the plan, New York Telephone failed to achieve many of the targets, and $72.3 million in penalties was levied by the NYPSC and refunded to end-users. New York Telephone's performance thereupon improved, with resultant decreases in the penalties to $5.3 million in year two and $3.7 million in year three.

1 BA-NY Application, Dowell/Canny Declaration, Appdx. A, Volume 3, pages 46-66 and Attachment C; BA-NY Application, Appdx. C, Tab 838.

The Performance Assurance Plan (PAP) was developed by NYDPS Staff, Bell Atlantic-NY, and the U.S. Department of Justice, in consultation with competitors, and was filed by Bell Atlantic-NY as part of its Pre-Filing Statement in April of 1998. The plan then went through many refinements consistent with the framework established in the Pre-Filing Statement, to take into account, among other things, changes to the metrics in the NYPSC's ongoing carrier-to-carrier proceeding.

Following several rounds of written comments and many meetings with the parties, Bell Atlantic-NY in July 1999 filed with the New York Commission a petition for approval of the Performance Assurance Plan. This filing was followed by a round of comments and reply comments from the parties; and a Notice of Proposed Rulemaking outlining the terms and conditions of the proposed plan was adopted by the NYPSC at its August session. Following additional discussions with NYDPS staff, Bell Atlantic-NY filed a supplemental petition on September 24, 1999, to further strengthen the PAP. The PAP is expected to be presented to the NYPSC for final adoption at its October 27, 1999 session,[1] following termination of the public notice period mandated by the New York State Administrative Procedure Act.

In the aggregate, the Plan subjects Bell Atlantic-NY to annual market adjustments (bill credits to competitors) totaling \$269 million.[2] Most significantly, however, the NYPSC has

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[1] The PAP will be enforceable as a New York Commission order once approved. Failure to comply with an order of the NYPSC may subject the non-compliant company to a penalty in the amount of \$100,000/day. New York Public Service Law, §25.

[2] In addition, \$39 million of the annual maximum is at risk twice, under separate provisions of the Plan. In other words, there are separate market adjustment triggers for \$39 million of the Plan. The dollar amounts are referred to as "market adjustments" since they are paid directly to CLECs, and thereby inure to the benefit of those who are

the authority to reallocate the market adjustments among the provisions of the Plan.[1] Thus, the NYPSC may dramatically increase Bell Atlantic-NY's incentives to maintain or improve service in particular areas.

Plan Components

The Performance Assurance Plan comprises four components[2]:

1. The Mode of Entry component, which measures Bell Atlantic-NY's performance, on an industry-wide basis, with respect to each of the methods by which competitors can enter the local exchange market.
2. The Critical Measures component, which measures Bell Atlantic-New York's performance in the areas that collectively are most important to competition.
3. A Change Control Performance Plan, which measures Bell Atlantic-New York's performance in implementing changes to its operations support systems, or OSS.
4. Special Provisions, which attach market adjustments to specific performance areas.

In the Mode of Entry component, Bell Atlantic-New York's performance is measured on a market-wide basis, with respect to each of four modes of entry:

1. Purchases of unbundled network elements.

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in the market.

1 BA-NY Application, Dowell/Canny Declaration, Appdx. A, Volume 3, page 48, and Attachment C, Exhibit 1.

2 The Change Control Performance Plan is considered as one part of the overall PAP.

2. Resale.

3. Facilities-based interconnection.

4. Collocation.[1]

Each mode of entry is assessed through a group of metrics[2] related to it. Performance in each one of these methods or Modes of Entry will be measured on an industry-wide basis, and substandard performance in any one will result in "market adjustments," i.e., bill credits, to competitors purchasing those types of services from Bell Atlantic-New York.[3] $75 million per year is at risk under this component of the Plan, which will be doubled should substandard performance continue at a level worse than the mid-point of the market adjustment range for three consecutive months.[4]

In the Critical Measures component, Bell Atlantic-New York's performance will be measured by 11 specific metric categories, with substandard performance under any one category or sub-category triggering a market adjustment. Unlike the Mode of Entry component, however, the market adjustments will inure solely to the benefit of those

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[1] While collocation is not necessarily a method of entry, it was separated for measurement and market adjustment purposes.

[2] The metrics have been established by the NYPSC as part of its carrier-to-carrier service quality proceeding, Case 97-C-0139.

[3] Market adjustments will be returned to CLECs based on lines in service, minutes of use and collocation cages due.

[4] The market adjustment amounts incurred for those three months will double, and all Mode of Entry market adjustments incurred in future months will also be doubled, until BA-NY's performance improves to one-fourth of the market adjustment range.

competitors that received substandard performance in the subject month. The Critical Measures component places an additional $75 million per year at risk.

The Change Control component measures Bell Atlantic-New York's performance on several metrics related solely to the company's performance in implementing OSS upgrades. Substandard performance under these metrics will result in market adjustments to all CLECs. Under this component, $10 million is at risk annually, plus an additional $15 million, which will be taken from the Mode of Entry component, if necessary.

The Special Provisions add specific incentives in flow through, order processing, and hot cuts. Bell Atlantic-NY must achieve at least one of two flow through targets, or pay market adjustments of $2.5 million quarterly. Bell Atlantic-NY must also provide at least 90% of Local Service Request (LSR) confirmations and rejections on time, in each of four categories, or pay $500,000 per month for each one missed. Those CLECs that received untimely LSR responses will share in the market adjustment. An additional $24 million per year is at stake to ensure that hot cuts are completed timely and accurately. Should Bell Atlantic-NY fail to achieve the targets established, it will incur up to $2 million per month in market adjustments, which will be provided to those CLECs who received service below the target levels.

Market Adjustment Scale

Bell Atlantic-NY had proposed that maximum price reductions be based on poor performance in the key "Order Confirmation Measures" and the Critical Measure metrics, and suggested that 10% of the monthly maximum be levied at the first point on the market adjustment scale. The parties asserted in their comments that the maximum limit should be set closer to zero, and that a greater amount of the maximum should be levied at the outset. The NYPSC NOPR set the maximum limits at -.67, -.67, -1 and -1.2 for the UNE, Resale, Interconnection and Collocation Modes of Entry, somewhat closer to zero than those proposed by Bell Atlantic-NY. The NYPSC also determined that 20% of the maximum monthly adjustment should be levied at the first point on the scale, to deter Bell Atlantic-NY from entering into the market adjustment range at all. As indicated, the NYPSC will take final action on or after October 27, 1999.

Monthly Market Adjustment Mechanism

1. Mode of Entry

On the 25th of each month, Bell Atlantic-NY files and distributes its carrier-to-carrier performance results for the preceding month.[1] This report contains approximately 500 service quality measures, which are reported in several formats: industry-wide and CLEC-specific, statewide and geographically disaggregated. Each measure in the Mode of Entry category has an assigned weight relative to its importance in keeping that Mode of Entry open to

[1] Several steps ensure that the metrics reported by Bell Atlantic-NY are calculated in accordance with the carrier-to-carrier definitions. First, beginning in November of 1998, NYPSC staff worked with KPMG to ensure that the underlying data used to calculate the metrics was collected from the appropriate sources, and was processed with adequate internal controls. (KPMG OSS Evaluation Project, Final Report, Verion 2.0, August 6, 1999, BA-NY Application, Appdx. C, Vol. 60a-c, Tab 916, at p. IV-174) Next, KPMG and staff developed algorithms based on the carrier-to-carrier definitions to verify that Bell Atlantic-NY's reported results conform to those definitions. This verification has been completed for January-July 1999, and is almost completed for the August results. Where errors have been discovered, Bell Atlantic-NY has submitted revised reports with corrected results. NYPSC staff has committed to continue to verify the metrics for at least six months following a grant of interLATA authority, and may audit specific results once it is determined that verification of each metric is no longer required.

competition. Each metric is then scored as "parity met," "parity in question" or "out of parity."

The weighted scores are then totaled. If the threshold is exceeded, a market adjustment is automatically triggered. The market adjustments work on a linear scale, with an increasing level of payment for poorer performance, beginning with an initial increment of 20% of the maximum monthly dollar amount. In addition, each Mode of Entry is evaluated to determine whether failures in performance are concentrated in any one of the four domains: pre-ordering, ordering, provisioning, and maintenance & repair. If the score in any one of these individual domains is 75% of the maximum score for that domain, an overall market adjustment will automatically be triggered at the level indicated.[1]

2. Critical Measures

The critical measures are more focused on performance in specific areas and with respect to individual CLECs. There are only 11 critical measures, and they are not aggregated. Since there is no aggregation of metrics, there is no threshold before payment is due. Performance below a specified level in any one of these individual measures will produce a market adjustment.

Bell Atlantic-NY's performance will first be analyzed on an industry-wide basis for each measure. If Bell Atlantic's score indicates that a market adjustment is due, only those

[1] If, for example, Bell Atlantic's performance in UNE ordering measures indicates that it missed 90% of the total potential score, 90% of the total UNE mode-of-entry market adjustments will be paid to the CLECs, notwithstanding that Bell Atlantic may have provided satisfactory service in all other pre-order, provisioning, and maintenance and repair measures. In the pre-order domain, a failure of just the pre-order response time metrics will also trigger 75% of the mode-of-entry adjustment.

CLECs receiving sub-par service will receive the adjustment. If no market adjustment is due based on the industry-wide analysis, Bell Atlantic's performance to each individual CLEC will be evaluated, to prevent targeted discrimination. If an individual CLEC receives sub-par service for two consecutive months, that CLEC receives a market adjustment, even if Bell Atlantic's performance is satisfactory to the industry as a whole.

3. Change Control

Bell Atlantic-NY's change control performance is measured with several specific measures, each of which can trigger a market adjustment, which is then payable to the industry as a whole. The Change Control plan differs from the mode-of-entry and critical measures plans in that there is no limit to the monthly market adjustments, although there is an annual limit.[1]

Conclusion

Bell Atlantic's performance in the post-approval environment will be monitored through the performance plan in several complementary areas. The Modes of Entry review overall market performance to the CLECs, including a measure to prevent concentrated discrimination in individual domains. The Critical Measures component reviews the most important measures on a CLEC-aggregate basis, returns monies to those CLECs receiving sub-par service, and adds a measure to detect discrimination on a CLEC-specific basis. The Change Control Plan focuses on the ability of Bell Atlantic to support and maintain quality OSS, while the Special Provisions focus Bell Atlantic-NY attention on specific, significant

1 As discussed above, the NYPSC may order reallocations of the market adjustments.

areas. In addition, performance incentives contained in individual interconnection agreements add their own set of remedies, which reflect the business strategies of individual CLECs.

For all these reasons, we are confident that Bell Atlantic-NY, once having earned §271 approval, has the proper incentive to continue to meet its commitments.

CC Docket No. 99-295: Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996.

CERTIFICATE OF SERVICE

I, Anne Ruth, hereby certify that an original and six (6) copies of comments in the above-captioned proceeding were sent via Federal Express to Magalie Roman Salas, Secretary of the Federal Communications Commission. In addition, copies were sent by First Class Mail, postage prepaid, to all parties on the attached service list.

Anne Ruth

Dated: October 18, 1999
Albany, New York